

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST, *et al.*,
individually and on behalf of a class of all others
similarly situated,

Plaintiffs,

v.

CITY OF BUFFALO, N.Y., *et al.*,

Defendants.

No. 1:18-cv-00719-CCR

ORDER RE DISCOVERY

Plaintiffs having moved to compel discovery by Defendants, and for related relief, it is hereby **ORDERED** pursuant to Rules 16, 26, and 37 of the Federal Rules of Civil Procedure as follows:

1. ***Form of Production.*** All production of electronically stored information (ESI) by Defendant City of Buffalo (the “City”) shall include metadata at the same level of detail as was produced on May 17 and May 31, 2021.

2. ***ESI Searches of Additional Custodians to Be Performed Now.*** The City shall perform searches of the ESI of the custodians set forth in this paragraph (the searches to include both e-mails and other ESI), with the search terms indicated, and shall produce the responsive documents located thereby.

(a) Search Terms

- (i) The search terms to be used consist of a set of “core terms,” which apply to every custodian, plus additional custodian-specific terms as set forth below.
- (ii) Each of these terms includes certain equivalents, as set forth in Exhibit A hereto.

FAILURE TO COMPLY WITH THE DEADLINES OF THIS ORDER WITHOUT GOOD CAUSE SHALL RESULT IN THE AWARD OF ATTORNEYS’ FEES AND EXPENSES

- (iii) The search terms **numbers** and **summons** are to be given the following Boolean/proximity meanings:
 - **numbers** means “(our pre/2 numbers) OR (numbers w/3 (good OR strong OR bad OR low~ OR poor~))”
 - **summons** means “summons~ w/25 (v.t.l. OR vtl OR traffic OR quality~)”
 - (iv) The “core terms” are check-point, road-block, impound, tint, tow, discriminat, rac, profil, bias, revenue, road check, zero tolerance, **numbers**, stop receipt/report, school/speed zone.
- (b) Custodians
- Chief Carmen Menza: Core terms, plus strike-force, hot pocket, hotspot
 - P.O. Robbin Thomas: Core terms, plus east side, traffic-stop, complain*, Internal Affairs Department (IAD)
 - P.O. William Macy: Core terms
 - Deputy Comm’r Joseph Gramaglia: Core terms, plus traffic-stop, lawsuit, strike-force, **summons**, hot pocket, hotspot, high crime, violent crime, high visibility
 - Michael DeGeorge: Core terms
 - Insp. Robert Rosenswie: Core terms plus traffic-stop, strike-force, **summons**, Hy, Hassett, Zak.
 - Insp. Harold McClellan: Core terms plus traffic-stop, strike-force, **summons**, Hy, Hassett, Zak.

Production under this paragraph shall be complete no later than 30 days after entry of this Order.

3. ***Additional ESI Searches for Custodians Previously Searched.*** The City shall conduct additional searches of the ESI (both e-mail and non-e-mail) of custodians previously searched, and produce the responsive documents located thereby, as follows:

<i>Custodians</i>	<i>Search Terms</i>
Brown, Lockwood, Rinaldo	school/speed zone, zero tolerance, <i>*numbers*</i> , stop receipt/report, Hy, Hassett, Zak
Serafini, Young	school/speed zone, zero tolerance, <i>*numbers*</i> , stop receipt/report

<i>Custodians</i>	<i>Search Terms</i>
Helfer, Morgera	school/speed zone, zero tolerance, stop receipt/report
Russo, Wilcox, McLean, Burke, Quinn, Strobele	school/speed zone, zero tolerance, *numbers*, stop receipt/report
Derenda	High visibility, zero tolerance, *numbers*, Hy, Hassett, Zak
Brinkworth	High visibility, zero tolerance, *numbers*
Mann, Beatty, Roberts	High visibility, zero tolerance, *numbers*

Production under this paragraph shall be complete 30 days from the date of this Order. There shall be no further searches conducted with respect to these custodians.

4. ***ESI Production for Witnesses Who Will Be Deposed.*** If any of the individuals listed in this paragraph becomes a deposition witness, the City shall search for such witness's ESI (e-mail and non-e-mail) and shall produce responsive documents no later than three weeks before the deposition, so long as Plaintiffs have given Defendants three weeks' lead time on the need to make such production (four weeks' lead time in the case of Chief Barba).

- (a) The individuals are Officers M. Acquino, Domaracki, M. Healy, Hy, Hassett, Whiteford, Wigdorski, Tedesco, and Miller, and Chief Barba.
- (b) For all individuals except Chief Barba, the search terms are the core terms plus east-side, traffic-stop, complain*, and Internal Affairs Department (IAD).
- (c) For Chief Barba, the search terms are the core terms plus housing, strike-force, hot pocket, hotspot, complain*.

5. ***ECAC Project Files.*** The City shall complete production by February 28, 2022 of all Erie Crime Analysis Center files for projects identified as having been performed for a Chief-level or higher official of the BPD. Production shall include, as to each project, identification of the project and the BPD official for whom was conducted. Also by February 28, 2022, the City shall supply the same identification data for projects as to which production has already been made.

6. ***ECAC E-mail Production.*** The City shall make production as follows from all ECAC-related e-mail accounts to which it has access:

- (a) Custodians:
 - Wrona
 - Schellinger
 - Billanti
 - Giammaresi
- (b) Scope:
 - e-mails to or from BPD e-mail addresses hitting the search terms below
 - internal e-mails between any of the three analysts and Mr. Giammaresi hitting any of those search terms
- (c) Search terms:
 - full original set, plus
 - hot pocket, hot spot, high visibility, zero tolerance, road check, roadway safety, traffic

The City shall complete ECAC e-mail production no later than April 15, 2022. Production shall include all responsive e-mails from Jamie.giammaresi@dcjs.state.ny.us unless no later than 30 days from the date of this Order, the City submits an affidavit stating that it does not have, and never has had, access to that account.

7. ***ENTCAD Database.*** In order to permit Plaintiffs to assess the need for further production, and in light of the City's representation that there is no field list or coding manual for the ENTCAD (Dispatch) database, the City shall, no later than January 21, 2022, produce every entry in the ENTCAD database for (a) June 24, 2015 and (b) April 27, 2017. Production shall be on an attorneys'-eyes-only basis and shall be used by Plaintiffs' counsel solely for the purpose of determining the scope of overall production to be sought from the database. If, within 30 days after

production of the two sample days, the parties are unable to reach agreement on the scope of overall production to be made from the ENTCAD database, the matter shall be submitted to the Court on papers for resolution.

8. ***Housing Unit/Strike Force Overtime Reports.*** The City shall complete production of all such reports (January 1, 2012 to the present) no later than February 28, 2022. Completion of production under this paragraph shall be certified by affidavit.

9. ***RFP ##97-99.*** For each current or former BPD employee whom Plaintiffs depose in this action, the City shall search for, and produce no later than seven days before the deposition, all documents responsive to Requests 97-99 that relate to that witness, provided that Requests 97(i) and 97(ii) are limited to complaints and BPD misconduct investigations concerning racial profiling, biased policing, checkpoints, towing/impound, and traffic enforcement.

Dated: January , 2022

United States District Judge

EXHIBIT A TO ORDER RE DISCOVERY

Each of the search terms below includes the equivalents listed.

Search Term	Includes
bias	bias, biased
BPD-HU	BPD-HU, HU
budget	budget, budgets, budgetary
camera	camera, cameras
check-point	check-point, checkpoint, check point, checkpoints, check points
complain*	complain, complainant, complained, complaint, complaints, complt
crackdown	crackdown, crack down
discriminat	discriminate, discriminates, discriminated, discriminatory, discrimination
east-side	eastside, east side
Erie Crime Analysis Center (ECAC)	Erie Crime Analysis Center, ECAC
high crime	high crime, high-crime, highcrime
high visibility	high visibility
hot pocket	hotpocket, hot pocket, hotpockets, hot pockets
Hotspot	hotspot, hot spot, hotspots, hot spots
housing	housing
impound	impound, impounds, impounded
Internal Affairs Department (IAD)	Internal affairs, IAD
law-suit	lawsuit, law suit, lawsuits, law suits, law-suit
profil	profile, profiled, profiling
quota	quota, quotas
rac	race, racial, racist, racism
revenue	revenue, revenues
road check	road check, roadcheck, road checks, road check, road-check, road-checks

Search Term	Includes
road-block	roadblock, road block, roadblocks, road blocks, road-block, road-blocks
roadway safety	roadway safety, roadway-safety
safety-check	safety check, safety checks
school/speed zone	school zone, speed zone
stop receipt/report	stop receipt, stop receipts, stop report, stop reports
strike-force	strikeforce, strike force, SF, strike-force
ticket	ticket, tickets, ticketing
tint	tint, tints, tinted
tow	tow, towed
traffic safety	traffic safety, traffic-safety
traffic-stop	traffic stop, traffic stops
violent crime	violent crime, violent crimes
zero tolerance	zero tolerance